



INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	Review of the Construction Products Regulation ¹
LEAD DG (RESPONSIBLE UNIT)	Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (Unit C1 – Circular Economy and Construction)
LIKELY TYPE OF INITIATIVE	Legislative
INDICATIVE PLANNING	Q3 2021
ADDITIONAL INFORMATION	https://ec.europa.eu/growth/sectors/construction/product-regulation/review_en

The Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.

A. Context, Problem definition and Subsidiarity Check

Context

The Construction Products Regulation (CPR) was adopted in 2011 and applies in full since mid-2013. The main objective of the CPR is to ensure the free movement of construction products in the EU by laying down harmonised conditions for their marketing. The CPR does not set product requirements for construction products but harmonised rules on how to express their performance in relation to their essential characteristics and on the use of CE marking on those products. The Member States are responsible for safety, environmental and energy requirements applicable to construction works.

The Commission presented an Implementation Report on the CPR in July 2016² and engaged in wide stakeholder consultation on a variety of aspects through technical platforms³ since then.

Initially a "back-to-back" evaluation and impact assessment was launched to provide a solid basis for any future adaptation. However, the complexity of the regulation itself led to the decision to separate the evaluation and the impact assessment. The evaluation of the CPR⁴ was published on 24 October 2019, together with the Report on the relevance of the tasks of the European Organisation for Technical Assessment (EOTA)⁵.

In 2016-2018, three REFIT Platform opinions provided specific recommendations, to address issues related to the implementation of the CPR, which subsequently fed into the evaluation of the CPR.

The European Green Deal of December 2019⁶ mentions the Review of the CPR and the revision of the CPR is

¹ Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R0305>

² Report required by Article 67(2) CPR, COM(2016)445 final, 7.7.2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1470658645697&uri=CELEX:52016DC0445>

³ Five meetings have taken place so far: on 12.10.2016 on standardisation, on 18.01.2017 on simplification issues and on 14.03.2017 on information needs, on 21.06.2017 on the coexistence of EU and EU countries' systems and on 04.10.2017 on the future of EOTA.

⁴ Evaluation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, SWD(2019)1770, <https://ec.europa.eu/docsroom/documents/37827>.

⁵ Report from the Commission to the European Parliament and the Council on the outcome of the evaluation of the relevance of the tasks set out in Article 31(4) that receive Union financing pursuant to Article 34(2) of Regulation (EU) No 305/2011 COM/2019/800 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1571917158693&uri=COM:2019:800:FIN>.

⁶ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, the European Green Deal, COM(2019) 640, 11.12.2019, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2019%3A640%3AFIN>.

also included as one of the deliverables of the new Circular Economy Action Plan of March 2020⁷. The revision of the CPR will play a role in the announced Strategy for a Sustainable Built Environment to address the sustainability performance of construction products.

Problem the initiative aims to tackle

The evaluation of the CPR has shown that CPR compliance costs represent 0.6% to 1.1% of the sector's turnover, mainly borne by manufacturers. The analysis confirms the existence of economies of scale in compliance activities and shows that costs can be quite substantial for SMEs, particularly micro-enterprises. Despite the lack of firm evidence regarding the impacts of the CPR on the internal market, stakeholders generally perceive a positive impact of the CPR on cross-border trade.

There exist systemic challenges for which remedies are missing: the insufficient quality of harmonised standards, which prevents the system from meeting Member States' and industry's needs; the continuing existence of national marks and certification, in conjunction with ineffective and uneven market surveillance. Simplification has delivered below expectations.

The relative success of the alternative route (via EOTA) appears to be mainly a consequence of the insufficiencies of the standardisation process (mitigating the weaknesses of the standardisation route rather than providing a real alternative) and structural issues have been identified for EOTA, too.

Other relevant conclusions of the evaluation are: the need to remedy contradictions and overlaps with other EU legislation and to clarify boundaries with national requirements; the need to clarify the meaning of the CE marking for construction products and to address the duplication of information between the CE marking and the declaration of performance (DoP). The overall process (Commission standardisation requests, followed by development of the standards, then delegated acts) is perceived as being too slow. Finally, environmental aspects, safety of construction products and adaptation to innovation will have to be addressed.

Other aspects to be addressed include: the scope and objectives of the regulation, legal clarity, manufacturer access to harmonised technical specifications, the clarity of legal and quality criteria for harmonised technical specifications, the role of pivotal actors in the CPR system⁸ and of their deliverables, the coverage of further information needs, the establishment of a product database creating transparency, the strengthening of Notified Bodies and their designation system (also in light of added environmental aspects), enhancing harmonised decision making practice of Notified Bodies and authorities, facilitating and streamlining non-conformity procedures, complementing the empowerments for enforcement authorities.

In order to materialise the commitments of the European Green Deal and the Circular Economy Action Plan, a comprehensive environmental footprint assessment system has to be established to increase sustainability of construction products and contribute to the sustainability of construction works. This system needs to be aligned with horizontal policies, whilst covering the sector specific needs at the level of the environmental assessment of buildings and other construction works. Finally, there is a need to explore possibilities to enhance the greening of construction sector via requirements for such products, in accordance with or similarly to the emerging general environmental product policies (e.g. design principles facilitating repair, re-use and recycling and minimum recycled content quota).

Subsidiarity check (and legal basis)

The EU adopted the CPR in 2011 on the basis of Article 114 TFEU to avoid the disparity of Member State requirements for construction products which hindered trade within the Union⁹.

Any efforts to improve its functioning would have to take place at EU level. Optimising standardisation and the work of Notified Bodies and Technical Assessment Bodies can by definition not be usefully undertaken within the confines of national borders.

B. Objectives and Policy options¹⁰

This initiative aims to unlock the construction sector's growth and jobs potential by tackling the issues identified in the evaluation in order to improve the functioning of the single market for construction products. It aims at the

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan For a cleaner and more competitive Europe, COM/2020/98 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1583933814386&uri=COM:2020:98:FIN>.

⁸ European standardisation organisations, European Organisation for Technical Assessment (EOTA), Notified Bodies, Products Contact Points for Construction,

⁹ Recitals (1) and (2) of Regulation (EU) No 305/2011, recitals (1) to (3) of Directive 89/106/EEC.

¹⁰ See indicative option paper, available at <https://ec.europa.eu/docsroom/documents/40762>.

promotion of environmental goals set out in the European Green Deal and the Circular Economy Action Plan, thus aiming for harmonisation with a high level of (environmental) protection. Under Option D, it might finally aim at promoting product safety, thus aiming for harmonisation with a high level of protection.

Option A - Baseline scenario: No legislative change. Continued provision of guidance and soft law by the European Commission to improve implementation.

Option B - Repairing the CPR: This option would aim to clarify and streamline the scope of the CPR, ensure coherence with other EU legislation and address environmental aspects of construction products. It would also empower the Commission to act against partial system failures (in particular, to gain control on the adoption of harmonised technical specifications), ensure the comprehensiveness of the CPR's Common Technical Language, improve the use of the CPR's non-conformity procedures, enhance market surveillance and improve the efficacy of Notified Bodies.

Option C - Focusing the CPR: This option would include all the elements described in Option B. However, it would be limited in scope, to one or more of the three specific elements below:

Element 1: Limiting the CPR's scope to assessment methods - The Common Technical Language would be limited to assessment methods.

Element 2: Limiting the CPR's scope to core areas, i.e. to specific products or product families that would be identified during the legislative process. Outside these core areas, mutual recognition would apply.

Element 3: Making the Common Technical Language optional for manufacturers - Manufacturers could choose whether they use the Common Technical Language; Member States would remain obliged to offer market access to manufacturers that choose to use the Common Technical Language, they would be allowed to regulate for an alternative path to market access not based on the Common Technical Language.

Option D - Enhancing the CPR: This option also builds on the "Repairing CPR" option, including all the elements described in Option B, however product requirements dealing with product inherent aspects would be introduced in order to protect health, safety and the environment. Such product requirements would be gradually introduced into the CPR system following one of two possible approaches:

Option D1: New legislative framework approach for products requirements - Essential requirements would be laid down in standardisation requests; the European Committee for Standardisation (CEN) would be requested to develop voluntary standards; compliance with standards would provide presumption of conformity; the Declaration of Performance would, depending on the case, be complemented by a Declaration of Conformity and both would be combined in one document.

Option D2: Technical specifications approach for products requirements - Detailed requirements would be included in Harmonised Technical Specifications; requirements would be developed in line with Option B; harmonised standards would continue to play a role; the Declaration of Performance would be complemented by a Declaration of Conformity and both would be combined in one document.

Option E - Repealing the CPR: The CPR would be repealed without any substitute, relying on mutual recognition.

C. Preliminary Assessment of Expected Impacts

The following groups are potentially affected: manufacturers of construction products, construction contractors, providers of construction-related services (such as architectural and engineering activities), public authorities at all levels (EU, national and sub-national), standardisation organisations, technical assessment, testing and verifying bodies, as well as consumers, workers and citizens.

Likely economic impacts

Option A: costs would stay largely the same at the beginning but they could be expected to increase as additional national procedures for the environmental performance of construction products would be expected which would expose manufacturers to increasing administrative and thus cost burden.

Option B: improved market surveillance and enforcement would ensure fairer competition. Addressing issues related to Notified Bodies and standardisation would increase legal certainty, smoothen implementation and thus reduce implementation costs. Option B would also allow setting up a harmonised taxonomy for the environmental impacts of construction products, which could put an end to the popping up of diverging, mutually incompatible national taxonomies and the additional implementation costs related to these.

Option C: same impacts as option B, to a much more limited extent as Option C would limit the scope of EU

<p>legislation, could be expected in the area(s) of focus of this option.</p> <p>Option D: the additional economic benefits and costs of the wider and profound revision options would depend on the possible variations. Setting product requirements would lead to adjustment costs for operators whereas the impact for market surveillance authorities would be minimal or even positive, yet it should facilitate cross-border trade.</p> <p>Option E: economic operators may to some extent benefit from not having to comply with the CPR but they might incur additional costs in order to adapt to (changes in) their domestic regulatory regime compared to the CPR regime (even if they do not trade across EU). It is not excluded that intra-EU trade would decrease.</p>
<p>Likely social impacts</p>
<p>No direct social impacts are expected. However, Option D would increase inherent product safety, ensuring a higher level of protection of workers and buildings' users/occupants.</p>
<p>Likely environmental impacts</p>
<p>The construction sector plays a role in the environmental performance of buildings and infrastructure throughout their lifecycle. Improving legislative coherence with energy efficiency legislation where needed and improving the functioning of the still fragmented market for construction products should reinforce the enabling role of the construction sector. Including sustainability considerations in the objectives and mechanisms of the regulation as announced in the European Green Deal and the new Circular Economy Action Plan would facilitate the transition to a more innovative and sustainable European construction sector.</p> <p>Hence, benefits to the environment can be expected to result from option B and C. Option D would have a slightly higher positive effect on the environment through the setting up of environmental product requirements.</p>
<p>Likely impacts on fundamental rights</p>
<p>No impacts on fundamental rights are expected.</p>
<p>Likely impacts on simplification and/or administrative burden</p>
<p>Option A, which implies legislative stability, would avoid additional administrative burden.</p> <p>Options B, C and D would create additional administrative burden stemming from having to become acquainted with, and adapt to, new legislation and requirements. Improving coherence between legislation on construction products and energy efficiency/Eco design legislation would on the other hand contribute to simplification and reduction of administrative burden.</p> <p>Option E could reduce administrative burdens from EU legislation if the principle of mutual recognition would be applied and implemented in full by Member States, however economic operators would need to adapt their products to different legislative framework if they wish to market these in other EU countries.</p>
<p style="text-align: center;">D. Data Collection and Better Regulation Instruments</p>
<p>Impact assessment</p>
<p>An impact assessment is being prepared to support the preparation of this initiative and to inform the Commission's decision.</p>
<p>Data collection</p>
<p>The impact assessment will analyse and assess the potential impacts of the different policy options (presented in sections B and C) and cover the necessary elements of such an exercise in compliance with the Better Regulation guidelines.</p> <p>It will make use of the several Commission reports and studies already available¹¹ and will take into account relevant outcomes of other parallel exercises (Joint Initiative on Standardisation, Single Digital Gateway, Single Market Enforcement Action Plan¹²) and the REFIT Platform opinions.</p>
<p>Consultation strategy</p>

¹¹ See https://ec.europa.eu/growth/sectors/construction/support-tools-studies_en and https://ec.europa.eu/growth/sectors/construction/product-regulation/review_en.

¹² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Long term action plan for better implementation and enforcement of single market rules, COM (2020)94, 10.03.2020.

Stakeholders have been consulted in the context of previous reports and studies as well as the evaluation of the CPR. Full use of the evidence available will be made to identify any further consultation need.

The main target is industry (manufacturers of construction products, construction contractors, providers of construction-related services, e.g. architectural and engineering activities) - in particular SMEs, as well as industry associations, public authorities, standardisation organisations, technical assessment, testing and verifying bodies, and potentially environmental NGOs, consumer associations, trade unions, consumers, workers and citizens.

The following elements for a consultation strategy are envisaged:

- an internet-based Public Consultation, to be announced on the Commission's consultations website: https://ec.europa.eu/info/consultations_en;
- two targeted consultations of mains stakeholders (i.e. one aimed at defining future potential options and one at providing evidence for assessing the impacts of these future potential options);
- validation of the preliminary findings by relevant stakeholders.

Will an Implementation plan be established?

An implementation plan will be established if appropriate.